

## EN BANC

[ G.R. No. 126252, August 30, 1999 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF-APPELLEE, VS. JESUS GARCIA Y MANABAT, ACCUSED-APPELLANT.**

### D E C I S I O N

**PUNO, J.:**

For review is the conviction of accused-appellant **JESUS GARCIA y MANABAT** for illegal possession of five (5) kilos of marijuana for which he was **initially** sentenced to death. The Information<sup>[1]</sup> against him reads:

"That on or about the 28th day of November, 1994, in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully and feloniously have in his possession, custody and control five (5) kilos of compressed marijuana dried leaves, without the authority of law to do so, in violation of the abovesited provision of the law."

"CONTRARY TO LAW."

Upon arraignment, accused-appellant pled not guilty.

The prosecution's case hinges on the testimony of **Senior Inspector OLIVER ENMODIAS**. He recounted that on November 28, 1994, he and **SPO3 JOSE PANGANIBAN** boarded a passenger jeepney from their office in Camp Dangwa, La Trinidad, Benguet, en route to Baguio City. He took the seat behind the jeepney driver while SPO3 Panganiban sat opposite him. They were in civilian attire. When the jeepney reached km. 4 or 5, **accused JESUS GARCIA** boarded the jeepney carrying a plastic bag. He occupied the front seat, beside the driver and placed the plastic bag on his lap. After a couple of minutes, the policemen smelled marijuana which seemed to emanate from accused's bag. To confirm their suspicion, they decided to follow accused when he gets off the jeepney.<sup>[2]</sup>

The accused alighted at the Baguio City hall and the police officers trailed him. The accused proceeded to Rizal Park and sat by the monument. Half a meter away, the police officers saw the accused retrieve a green travelling bag from the back pocket of his pants. He then transferred five (5) packages wrapped in newspaper from the plastic bag to the green bag. As the newspaper wrapper of one of the packages was partially torn, the police officers saw the content of the package. It appeared to be marijuana.<sup>[3]</sup> Forthwith, the policemen approached the accused and identified themselves. The accused appeared to be nervous and did not immediately respond. The policemen then asked the accused if they could inspect his travelling bag. The accused surrendered his bag and the inspection revealed that it contained five (5) bricks of what appeared to be dried marijuana leaves. The police officers then

arrested the accused and seized his bag. The **accused was turned over to the CIS office** at the Baguio Water District Compound **for further investigation**. He was appraised of his custodial rights. At about 5 p.m., the arresting officers left for the crime laboratory at Camp Dangwa, Benguet, for chemical analysis of the items seized from the accused. **The next day, the policemen** executed their joint affidavit of arrest and **transferred the accused to the Baguio city jail**. Verification by the arresting officers of the records at the Narcotics Command revealed that the accused's name was in the list of drug dealers.<sup>[4]</sup> The result of chemical analysis of the five (5) items seized from the accused confirmed that they were dried marijuana fruiting tops, weighing a total of five (5) kilos.<sup>[5]</sup>

For his part, the accused admitted being at the *locus criminis* but denied possessing marijuana or carrying any bag on November 28, 1994. He alleged that on said day, at about 8:00 a.m., he left his residence in Angeles City **to visit his brother, NICK GARCIA, whom he had not seen for ten (10) years**. He arrived in Baguio City at 12:30 p.m. Before proceeding to his brother's house, he took a stroll at the Rizal Park. At about 2:00 p.m., two (2) men accosted him at the park. They did not identify themselves as police officers. They held his hands and ordered him to go with them. Despite his protestations, he was forcibly taken to a waiting car<sup>[6]</sup> and brought to a safehouse. There, he was asked about the source of his supply of illicit drugs. When he denied knowledge of the crime imputed to him, he was brought to a dark room where his hands were tied, his feet bound to a chair, his mouth covered by tape and his eyes blindfolded. They started mauling him. Initially, he claimed he was **kicked and punched** on the chest and thighs. When asked further whether he suffered bruises and broken ribs, he answered in the negative. Thereafter, he explained that there were no visible signs of physical abuse on his body as he was **only punched, not kicked**. Notwithstanding the maltreatment he suffered, the accused claimed he stood firm on his denial that he was dealing with illicit drugs.<sup>[7]</sup>

To corroborate accused's testimony, the defense presented **MANUEL DE GUZMAN**, a resident of Baguio City and a neighbor of accused's brother Nick Garcia. He came to know the accused in **1994** when accused visited his brother Nick, **a few months before accused was arrested in November that same year**. He recounted that in the afternoon of November 28, 1994, while he was walking along Rizal Park, he noticed two (2) men holding the accused's hands and forcing him to a car. He was then about 8-10 meters away. He did not see the accused or any of the two men carrying a bag.<sup>[8]</sup>

In a Decision, dated January 29, 1996, **RTC Judge Pastor de Guzman, Jr.**<sup>[9]</sup> found the accused guilty of illegal possession of prohibited drugs and **sentenced him to suffer the maximum penalty of death**. The dispositive portion reads:

"WHEREFORE, premises considered, the Court finds the accused Jesus Garcia y Manabat guilty of the violation of Section 8, Art. II of R.A. 6425 as amended by R.A. 7659, involving possession of marijuana weighing 5 kilograms, beyond reasonable doubt.

"The penalty for the possession of marijuana weighing 5 kilograms as provided under R.A. 6425 as amended by R.A. 7659 is Death. The Court has no recourse but to sentence the accused Jesus Garcia y Manabat to suffer the death penalty. The law is harsh but it must be followed and

obeyed, `dura lex sed lex.'"

"SO ORDERED."

**The decision was promulgated on February 20, 1996.**

On February 26, 1996, the accused **moved for reconsideration.**<sup>[10]</sup> He reiterated his position that the uncorroborated testimony of prosecution witness Inspector Enmodias was insufficient to establish his guilt. He further contended that he should only be punished with *reclusion perpetua*.

On **April 12, 1996**, Judge de Guzman, Jr. filed an **application for disability retirement.** This Court, in its *en banc* **Resolution,**<sup>[11]</sup> **dated June 18, 1996, approved his application.** The **effectivity of his retirement was made retroactive to February 16, 1996.**

On August 6, 1996, Acting Presiding Judge Eulogio Juan R. Bautista issued an **Order**<sup>[12]</sup> granting in part accused's Motion for Reconsideration. For lack of aggravating circumstance, the accused's penalty for illegal possession of marijuana was reduced from death to *reclusion perpetua*.

In the case at bar, appellant impugns his conviction on the following grounds: (a) the decision convicting him of the crime charged was not validly promulgated as the promulgation was made (4) days after the retirement of the judge who penned the decision; (b) the uncorroborated testimony of prosecution witness Senior Inspector Enmodias is insufficient to establish his guilt beyond reasonable doubt.

First, we shall thresh out the procedural matter raised by appellant.

In his **Motion for Clarification,**<sup>[13]</sup> appellant contends that since the decision under review was promulgated on February 20, 1996, four (4) days **after** the approved retirement of Judge de Guzman, Jr., his decision is void and has no binding effect.<sup>[14]</sup>

We reject this contention. Undisputably, a decision promulgated **after** the retirement of the judge who signed it is null and void. Under the Rules on Criminal Procedure,<sup>[15]</sup> a decision is valid and binding only if penned and promulgated by the judge **during his incumbency.** To be precise, a judgment has legal effect only when it is rendered: (a) by a court legally constituted and in the **actual exercise** of judicial powers, **and** (b) by a judge legally appointed, duly qualified and **actually acting either de jure or de facto.**<sup>[16]</sup> A judge **de jure** is one who exercises the office of a judge as a matter of right, fully invested with all the powers and functions conceded to him under the law. A judge **de facto** is one who exercises the office of judge under some **color** of right. He has the reputation of the officer he assumes to be, yet he has some defect in his right to exercise judicial functions at the particular time.<sup>[17]</sup>

In the case at bar, the decision under review was **validly promulgated.** Although the effectivity of Judge de Guzman, Jr.'s disability retirement was made retroactive to February 16, 1996, it cannot be denied that **at the time his subject decision**

**was promulgated on February 20, 1996, he was still the incumbent judge of the RTC, Branch LX of Baguio City, and has in fact continued to hold said office and act as judge thereof until** his application for retirement was approved in **June 1996**. Thus, as of February 20, 1996 when the decision convicting appellant was promulgated, Judge de Guzman, Jr. was actually discharging his duties as a *de facto* judge. In fact, as of that time, **he has yet to file his application for disability retirement**. To be sure, as early as 1918, we laid down the principle that where the term of the judge has terminated and he has **ceased to act as judge**, his subsequent acts in attempting to dispose of business he left unfinished before the expiration of his term are void.<sup>[18]</sup> However, in the present case, as Judge de Guzman, Jr. was a *de facto* judge in the **actual exercise of his office** at the time the decision under review was promulgated on February 20, 1996, said decision is legal and has a valid and binding effect on appellant.<sup>[19]</sup>

On the merits, we likewise affirm appellant's conviction.

In his **Memorandum**<sup>[20]</sup> before the trial court, appellant insisted that the prosecution was unable to discharge its *onus* of establishing his guilt beyond reasonable doubt. He maintained that the **uncorroborated** testimony of the prosecution's main witness, Senior Inspector Enmodias, is incredible and unreliable. **Firstly**, appellant pointed out that if the police officers indeed smell and the marijuana he was allegedly carrying while they were all on board the jeepney, they should have immediately arrested him instead of waiting for him to alight and stroll at the Rizal Park. **Secondly**, appellant faulted the procedure adopted by the arresting officers who, after the arrest, took him to the CIS Office at the Baguio Water District Compound for investigation instead of bringing him to the nearest police station, as mandated under Section 5, Rule 113 of the Rules on Criminal Procedure. **Finally**, appellant theorized that the prosecution's omission or failure to present the other arresting officer, SPO3 Panganiban, to corroborate the testimony of its witness Senior Inspector Enmodias was fatal to the prosecution's case as the lone testimony of Enmodias failed to prove his guilt beyond reasonable doubt.

These contentions of appellant fail to persuade. The prosecution was able to prove appellant's guilt beyond reasonable doubt. There is nothing irregular in the manner appellant was apprehended by the police authorities. On the contrary, we find that, without compromising their sworn duty to enforce the law, the police officers exercised **reasonable prudence and caution** in desisting to apprehend appellant inside the jeepney when they **initially suspected** he was in possession of marijuana. They sought to verify further their suspicion and decided to trail appellant when the latter alighted from the jeepney. It was only after they saw that one of the packages with the torn wrapper contained what looked like marijuana fruiting tops did they accost appellant and make the arrest. At that precise time, they had obtained personal knowledge of circumstances indicating that appellant had illicit drugs in his possession. They had reasonable ground upon which to base a lawful arrest without a warrant.

Neither do we find anything irregular with the turn over of appellant to the CIS Office. At the trial, it was sufficiently clarified that this has been the practice of the arresting officers as their office had previously arranged with the CIS for assistance with respect to investigations of suspected criminals, the CIS office being more specialized in the area of investigation.<sup>[21]</sup> Neither can the police officers be held